

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

PAUL R. WILLIAMS,

Defendant.

)  
)  
)  
)  
)  
)

Case No. 1906010188

MEMORANDUM OPINION

Date Submitted: December 6, 2019

Date Decided: January 6, 2020

*Upon Defendant's Motion to Suppress Witness Out-of-Court Identification and  
Exclude In-Court Identification: **DENIED.***

William L. Rasis, Esquire, Department of Justice, Carvel State Office Building, 820  
N. French Street, Seventh Floor, Wilmington, Delaware, Deputy Attorney General.

Monika G. Germono, Esquire, Office of the Public Defender, Carvel State Office  
Building, 820 N. French Street, Third Floor, Wilmington, Delaware, Attorney for  
Defendant.

**Jurden, P.J.**

## I. INTRODUCTION

On August 5, 2019, a grand jury indicted Defendant Paul Williams (“Williams”) on charges of Home Invasion, Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person Prohibited, Aggravated Menacing, Assault Second Degree, and Criminal Mischief. Williams moves to suppress out-of-court identifications by two witnesses, and to exclude the potential in-court identification by those witnesses, arguing that the single photo identification procedure employed by police was impermissibly suggestive and violated his due process rights under the Fourteenth Amendment of the United States Constitution and the Delaware Constitution.<sup>1</sup> For the reasons that follow, Williams’s Motion to Suppress Witness Out-Of-Court Identification and Exclude In-Court Identification is **DENIED**.

## II. BACKGROUND

On June 16, 2019, around midnight, New Castle County Police responded to a robbery that took place in an apartment in Newark, Delaware.<sup>2</sup> According to the victim, Eric Maloney (“Maloney”), he invited an acquaintance named Mir to his apartment to hang out.<sup>3</sup> Mir arrived at Maloney’s apartment with an unknown male.<sup>4</sup>

---

<sup>1</sup> Def.’s Mot. to Suppress (D.I. 15); Def.’s Suppl. (D.I. 24).

<sup>2</sup> State’s Reply at 1 (D.I. 16).

<sup>3</sup> Def.’s Mot. to Suppress ¶ 2.

<sup>4</sup> *Id.*

Approximately ten minutes after Mir arrived, while the three men were sitting around Maloney's kitchen table, Mir stood up, pulled out a firearm, and demanded Maloney give him all his money.<sup>5</sup> As Maloney attempted to push Mir away from him, the firearm discharged, hitting the glass kitchen table, causing a fragment of glass to strike Maloney's face.<sup>6</sup> Mir robbed Maloney of the cash in his pocket, and fled the apartment with the unknown male.<sup>7</sup>

Maloney told police he knew his assailant by the name Mir, but did not know his legal name.<sup>8</sup> Maloney met Mir through his friend, Ramir, and Maloney and Mir had "hung out" on prior occasions.<sup>9</sup> Maloney described Mir as a stocky black male with a lazy eye.<sup>10</sup> Maloney gave Mir's phone number to the police.<sup>11</sup>

Responding officers interviewed Maloney's girlfriend, who was asleep in Maloney's bedroom at the time of the robbery.<sup>12</sup> Maloney's girlfriend said she heard gunshots, ran out of the bedroom, and saw Mir and the unknown male fleeing the apartment.<sup>13</sup> Maloney's girlfriend said she knew Mir and had seen him at their apartment complex on prior occasions.<sup>14</sup> She provided the same description of the

---

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> State's Ex. 1 at 04:52.

<sup>9</sup> Def.'s Mot. to Suppress ¶ 3.

<sup>10</sup> *Id.* ¶ 4; State's Reply at 2, Ex. 1 at 05:36.

<sup>11</sup> *Id.*; State's Reply at 2, Ex. 1 at 03:45.

<sup>12</sup> State's Ex. 1 at 10:40.

<sup>13</sup> State's Reply at 2, Ex. 1 at 10:40.

<sup>14</sup> State's Ex. 1 at 07:45.

assailant as Maloney—a stocky black male with a lazy eye.<sup>15</sup> Maloney’s girlfriend provided the phone number she had for Mir in her phone to police.<sup>16</sup> This phone number matched the phone number for Mir provided to police by Maloney.<sup>17</sup>

Responding officers also interviewed Maloney’s friend, Ramir, who arrived at Maloney’s apartment after the robbery occurred.<sup>18</sup> Ramir knew Mir by the name “P,”<sup>19</sup> and had recently introduced him to Maloney.<sup>20</sup> Ramir described P as a stocky black male with a lazy eye—matching Maloney’s and Maloney’s girlfriend’s description of Mir.<sup>21</sup> Ramir provided to police the phone number he uses to call P, which matched the phone number for Mir.<sup>22</sup> Neither Maloney, Maloney’s girlfriend, nor Ramir know Mir/P’s legal name.

Detective Knorr conducted a tactical inquiry on the phone number provided by Maloney, Maloney’s girlfriend, and Ramir.<sup>23</sup> The tactical inquiry revealed that the phone number was included in multiple police reports and belonged to Defendant Paul Williams.<sup>24</sup> The phone number also matched Williams’s phone number on file

---

<sup>15</sup> *Id.* at 05:36, 07:45, 10:45.

<sup>16</sup> *Id.* at 03:45.

<sup>17</sup> *Id.*

<sup>18</sup> Def.’s Mot. to Suppress ¶ 3; State’s Reply at 2, Ex. 1 at 14:09.

<sup>19</sup> *Id.* ¶ 5; State Ex. 1 at 15:16

<sup>20</sup> State’s Ex. 1 at 14:09.

<sup>21</sup> State’s Reply at 2, Ex. 1 at 15:20.

<sup>22</sup> Def.’s Mot. to Suppress ¶ 5; State’s Reply at 2, Ex. 1 at 15:06.

<sup>23</sup> State’s Reply at 2. At the hearing, Detective Knorr testified that a tactical inquiry will show if a particular phone number has been included in any police reports and will connect that phone number to a particular individual who provided it to police officers in the past.

<sup>24</sup> *Id.*

with his probation officer.<sup>25</sup> In addition, Detective Knorr conducted a DELJIS inquiry on Williams which revealed a photo matching the physical description of Mir/P given by Maloney, Maloney's girlfriend, and Ramir.<sup>26</sup>

After the inquiries linked the phone number and description of the assailant to Williams, Detective Knorr reported to the hospital to have Maloney confirm whether his assailant Mir was in fact Williams.<sup>27</sup> Prior to showing Maloney the DELJIS photo of Williams, Detective Knorr asked Maloney to describe his assailant.<sup>28</sup> Again, Maloney described his assailant as a stocky black male with a lazy eye—the same description he provided earlier to police.<sup>29</sup> Detective Knorr then showed Maloney the DELJIS photo of Williams.<sup>30</sup> Maloney positively identified Williams as the man who robbed him earlier that night.<sup>31</sup> Almost simultaneously, Maloney's girlfriend—sitting beside him on the hospital gurney—leaned over to see the photo, and without hesitation, confirmed that Williams was the man she saw fleeing their apartment.<sup>32</sup> In the hospital waiting room, Ramir also confirmed that the photo of Williams was P.<sup>33</sup>

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 3.

<sup>28</sup> State's Ex. 2 at 01:32.

<sup>29</sup> *Id.* at 01:48.

<sup>30</sup> State's Reply at 3, Ex. 2 at 02:17.

<sup>31</sup> State's Ex. 2 at 02:17.

<sup>32</sup> *Id.* at 02:19.

<sup>33</sup> State's Reply at 7.

### III. PARTIES' CONTENTIONS

Williams makes several arguments. First, he claims that the single photo identification employed by Detective Knorr was clearly suggestive and the proper procedure would have been a photo line-up of multiple subjects.<sup>34</sup> Second, Williams claims that the out-of-court identification by Maloney is unreliable, and therefore inadmissible, because Maloney was “under the influence of medication and sleepy” when he made the identification.<sup>35</sup> Third, as to Maloney’s girlfriend’s out-court-identification, Williams claims that the combination of the use of a single photo and the fact that the single photo identification took place immediately after Maloney positively identified him as the assailant was an impermissibly suggestive procedure that caused a substantial likelihood of irreparable misidentification.<sup>36</sup>

In response, the State argues that regardless of whether the single photo identification procedure was impermissibly suggestive, it is reliable, and therefore, the out-of-court identifications by Maloney and Maloney’s girlfriend are admissible.<sup>37</sup> As to Maloney’s identification of Williams, the State maintains that it is reliable because Maloney knew his assailant, provided his assailant’s phone number, gave a specific physical description of his assailant, and after reviewing the

---

<sup>34</sup> *Id.* ¶¶ 21, 27.

<sup>35</sup> *Id.* ¶ 22.

<sup>36</sup> Def.’s Supp. ¶ 14.

<sup>37</sup> State’s Reply at 6.

photo of Williams, positively identified Williams as his assailant.<sup>38</sup> As to Maloney's girlfriend's identification of Williams, the State contends it is reliable as well because she too knew the assailant, provided the same description and phone number of the assailant as Maloney, and saw the assailant leaving the apartment the night of the robbery.<sup>39</sup>

#### IV. DISCUSSION

An impermissibly suggestive pretrial identification procedure does not *ipso facto* constitute a due process violation.<sup>40</sup> As the United States Supreme Court observed in *Neil v. Biggers*, it is the likelihood of irreparable misidentification which violates a defendant's right to due process.<sup>41</sup> The ultimate question of determining whether an impermissibly suggestive identification is admissible is whether, under the totality of the circumstances, the identification is reliable.<sup>42</sup> The United States Supreme Court has set forth several factors which the Court must consider in determining the reliability of an identification: (1) the opportunity of the witness to view the suspect at the time of the offense; (2) the witness' degree of attention; (3) the accuracy of the witness's prior description of the suspect; (4) the level of

---

<sup>38</sup> *Id.* at 7.

<sup>39</sup> December 6, 2019 Hearing.

<sup>40</sup> *Monroe v. State*, 28 A.3d 418, 431 (Del. 2011).

<sup>41</sup> *Neil v. Biggers*, 409 U.S. 188, 199 (1972).

<sup>42</sup> *Id.*; *see also Monroe*, 28 A.3d at 431 (If the Court determines "under the totality of the circumstances that a pretrial identification procedure is impermissibly suggestive, but the identification is nevertheless reliable, evidence of the pretrial identification will not be excluded at trial.").

certainty demonstrated by the witness at the identification; (5) the length of time between the offense and the identification.<sup>43</sup>

**A. Maloney's Out-Of-Court Identification Was Not Impermissibly Suggestive Or Unreliable.**

Under the totality of the circumstances, the Court finds that the single photo identification by Maloney was not impermissibly suggestive. First, Maloney knew his assailant.<sup>44</sup> Second, the tactical inquiry established that Mir's phone number matched the phone number contained in multiple police reports relating to Williams.<sup>45</sup> Third, the DELJIS photo of Williams matched the description of Mir.<sup>46</sup> Fourth, the phone number listed in Williams's probation file was the same phone number provided to police by Maloney, Maloney's girlfriend, and Ramir.<sup>47</sup> Fourth, prior to showing the photo of Williams to Maloney, Detective Knorr confirmed that Maloney's description of his assailant remained the same as the description he had provided earlier to police.<sup>48</sup> Given these facts, the Court does not find that it was impermissibly suggestive for Detective Knorr to show a photo of Williams to Maloney for purposes of identifying his assailant.

---

<sup>43</sup> *Id.*

<sup>44</sup> State's Ex. 1 at 04:52.

<sup>45</sup> State's Reply at 2.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> State's Ex. 2 at 01:32.



With respect to Williams's argument that Maloney's identification is unreliable because he was "under the influence of medication and sleepy" when he looked at Williams's photo, the Court does not find this argument persuasive. In *Presock v. State*, the Delaware Supreme Court affirmed the Superior Court's holding that it was not impermissibly suggestive when police asked witnesses at a party, who had consumed various amounts of alcohol, to identify their attackers by showing digital images of two suspects.<sup>49</sup> In *Baker v. State*, the Delaware Supreme Court affirmed the Court's holding that it was not impermissibly suggestive when a police officer showed an eight to ten photo line-up of a possible suspect to a victim, who was hospitalized and suffering from severe head lacerations, multiple contusions, and profuse bleeding.<sup>50</sup>

In the video recording of Maloney at the hospital, he appears tired and/or sleepy, but he is responsive to Detective Knorr's questions and able to recall the events that transpired earlier that evening.<sup>51</sup> Maloney does not appear "under the influence" of medication, nor is there anything to suggest he was impaired during the interview. He does not slur his words and his responses are cogent. Maloney's injuries were minimal compared to those suffered by the victim in *Baker*—Maloney sustained a minor laceration above his eye.

---

<sup>49</sup> 2013 WL 1087634 (Del. 2013) (TABLE).

<sup>50</sup> 344 A.2d 240 (Del. 1975).

<sup>51</sup> See State's Ex. 2.

Upon consideration of the *Neil v. Biggers* factors and the totality of the circumstances, the Court finds Maloney's out-of-court identification of Williams as his assailant was not impermissibly suggestive and is reliable. Maloney knew his assailant.<sup>52</sup> Maloney had familiarity with Williams's appearance before making the identification; he stated that he had met his assailant a few times before the incident.<sup>53</sup> Maloney invited his assailant over to his apartment, and sat across from him at his table for several minutes. The setting of the confrontation was small in size, and he had ample opportunity to observe his assailant before and during the robbery.<sup>54</sup> The phone number provided by Maloney matched Williams's phone number in multiple police reports and Williams's probation file. Maloney was able to provide a relatively detailed description of his assailant which matched the description of Williams and Williams's DELJIS photo. Maloney positively identified Williams as his assailant approximately two hours after the incident occurred and was certain his assailant was Williams.<sup>55</sup> In addition, there is nothing in the record to suggest that Maloney hesitated or questioned his memory when he viewed Williams's DELJIS photo. Thus, the Court does not find that Maloney's

---

<sup>52</sup> State's Ex. 1 at 04:52.

<sup>53</sup> Def.'s Mot. to Suppress ¶ 3.

<sup>54</sup> See *Harris v. State*, 113 A.3d 1067, 1076 (finding that the witness had ample opportunity to view his assailant where the scene of the confrontation was "well-lit and small in size").

<sup>55</sup> December 6, 2019 Hearing.

out-of-court identification was to the extent that would give rise to a very substantial likelihood of irreparable misidentification, which is a very high standard.<sup>56</sup>

**B. Maloney's Girlfriend's Out-Of-Court Identification Was Not Impermissibly Suggestive Or Unreliable.**

Williams argues that Maloney's girlfriend's out-of-court identification was impermissibly suggestive because it was simultaneous with Maloney's identification.<sup>57</sup> Although some courts have adopted a *per se* exclusionary rule for simultaneous identifications of a suspect by two or more witnesses in the presence of each other, Delaware courts have not.<sup>58</sup> In *Talbert v. State*, the Delaware Supreme Court held that the admissibility of simultaneous witness identifications is based on the *totality of the circumstances*.<sup>59</sup> The Delaware Supreme Court stated:

[W]here it is feasible, the police should have each witness or victim stand alone and make any identification while standing alone from others. Simultaneous identifications, however, while they should be avoided are not *per se* impermissible.<sup>60</sup>

In the case *sub judice*, although Maloney and his girlfriend were not separated during the identification procedure, Detective Knorr did not purposely show Williams's photo to Maloney and his girlfriend simultaneously.<sup>61</sup> The video

---

<sup>56</sup> See *Monroe v. State*, 28 A.3d at 434.

<sup>57</sup> Def.'s Supp. ¶ 14.

<sup>58</sup> See e.g., *Talbert v. State*, 1989 WL88644, at \*2 (Del. 1989) (TABLE); *State v. Holmes*, 2012 WL 4086169, at \*10 (Del. Super. Aug. 23, 2012).

<sup>59</sup> 565 A.2d 281, 1989 WL 88644, at \*2 (Del. 1989 (TABLE) (emphasis added).

<sup>60</sup> *Id.* (citing *Harris v. State*, 350 A.2d 768, 771 (Del. Super. 1975)).

<sup>61</sup> State's Ex. 2 at 02:06–23.

recording shows that Detective Knorr held up her phone with the DELJIS photo of Williams directly to Maloney while he was lying on the hospital gurney.<sup>62</sup> Detective Knorr asked Maloney if he recognized the man in the photo, and Maloney—without hesitation—positively identified Williams as his assailant, Mir. Almost simultaneously, Maloney’s girlfriend leaned over to look at the photo, and positively identified Williams as well.<sup>63</sup> Detective Knorr explained that when conducting a photo line-up of *multiple* subjects, the procedure would be to separate the witnesses, but when showing a single photo to confirm the identity of an individual—it was not necessary to separate Maloney and his girlfriend.<sup>64</sup> Given the totality of the circumstances present here, the Court is persuaded that the pretrial identification was not impermissibly suggestive.

Even assuming, *arguendo*, the identification was impermissibly suggestive, it is nonetheless reliable. First, like Maloney, his girlfriend knew the assailant, and she had seen him on multiple occasions arriving and leaving their apartment complex.<sup>65</sup> She had the assailant’s phone number in her phone, and Maloney called Mir on her phone the night of the robbery to invite him to their apartment.<sup>66</sup> Second, she told police that the assailant “looked straight at [her]” when he was fleeing the

---

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> December 6, 2019 Hearing.

<sup>65</sup> State’s Ex. 1 at 07:45, Ex. 2 at 06:30.

<sup>66</sup> State’s Ex. 2 at 09:05.

apartment.<sup>67</sup> Third, she provided a relatively detailed description of Mir, which matched Maloney's description and the DELJIS photo of Williams. Fourth, when Maloney's girlfriend positively identified Williams, it did not appear that she hesitated in making her decision, nor did it appear she was influenced by Maloney when doing so.<sup>68</sup> Thus, the Court finds that Maloney's girlfriend's positive identification of Williams as the assailant is reliable, and therefore, admissible at trial.

**C. Maloney's And Maloney's Girlfriend's Future In-Court Identifications Are Admissible At Trial.**

"The general rule is that, absent an unduly suggestive pretrial identification procedure, questions as to the reliability of a proposed in-court identification affect only the in-court identification's weight and not its admissibility."<sup>69</sup> As the Delaware Supreme Court stated in *Byrd v. State*, "the remedy for any alleged suggestiveness of an in-court identification is cross-examination and argument."<sup>70</sup> For the reasons stated above, the Court finds Maloney's and Maloney's girlfriend's pretrial identifications of Williams are not impermissibly suggestive and are reliable, and

---

<sup>67</sup> State's Ex. 1 at 10:45.

<sup>68</sup> See *State v. Holmes*, 2012 WL 4086169, at \*10 (Del. Super. Aug. 23, 2012) (noting that the obvious danger of simultaneous identifications of two or more witnesses is that the identification by the first witness could improperly influence other witnesses in making their decisions).

<sup>69</sup> *Byrd v. State*, 25 A.3d 761, 764 (Del. 2011).

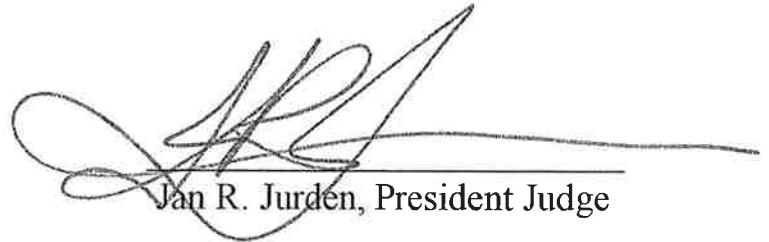
<sup>70</sup> *Id.*

therefore, their future in-court identifications of Defendant Paul Williams are admissible at trial.

## V. CONCLUSION

For the reasons explained above, the out-of-court identification procedure employed was not impermissibly suggestive, and therefore, Maloney's and Maloney's girlfriend's out-of-court and prospective in-court identifications are admissible. Therefore, Defendant Paul Williams's Motion is **DENIED**.

**IT IS SO ORDERED.**



Jan R. Jurden, President Judge

Original to Prothonotary

cc: Williams L. Rasis, Esquire  
Monika G. Germono, Esquire